HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

DIVISION BENCH

CORAM : HON'BLE SHRI S.R. NAYAK, CJ.
HON'BLE SHRI D.R. DESHMUKH, J.

Writ Petition No. 2584 OF 2006

Petitioner: Visheshwer Narayan Dwivedi, S/o Late Balram Prasad Dwivedi, Aged about 50 yearas, Annpurna Mandir, Sheorinarayan, Janjgir Champa (C.G.).

Versus

Respondents

1. State of Chhattisgarh, Through Secretary, Excise Department, Mantralaya, Shastri Chowk, Raipur (C.G.).
2. Excise Commissioner, Shiv Bhawan, Raipur (C.G.)
3. Collector (Excise), Janjgir Champa (C.G.)
4. Shri Bhaiyalal Jaiswal, S/o Late Bacchalal Jaiswal, Aged about 80 years, R/o Manendragarh, District – Koria (C.G.)

Writ Petition No. 2191 OF 2006

Petitioner: Bhaiyalal Jaiswal, S/o Late Shri Bachchalal Jaiswal, Aged about 80 years, R/o Manendragarh, District Korea (Chhattisgarh)

Versus

Respondents

1. State of Chhattisgarh, through Secretary, Department of Excise, Mantralaya, Dau Kalyan Singh Bhawan, Raipur (Chhattisgarh)
2. Commissioner (Excise), Chhattisgarh, Raipur (C.G.)
3. Collector (Excise), District Janjgir-Champa (Chhattisgarh).

4. Additional Commissioner, District Janjgir Champa (Chhattisgarh)

Present : Shri Prashant Jayaswal, learned Sr. Advocate with Shri Ali Asgar, learned counsel for the petitioner-Visheshwer Narain Dwivedi in W.P. No. 2584/06.

Shri Manindra Shrivastava, learned Sr. Advocate with Shri Amrito Das, learned counsel for the petitioner-Bhaiyalal Jaiswal in W.P. No. 2191/06.

Shri Prashant Mishra, learned Addl. A.G. with Shri Utkarsh Verma, learned Dy. G.A. for the State.

ORAL ORDER
(Passed on 27th June, 2006)

The following oral order of the Court was passed by

S.R. Nayak, CJ.

Both the writ petitions arise out of the licence granted in favour of the petitioner in W.P. No. 2191/2006 who is arrayed as respondent no. 4 in W.P. No. 2584/2006, to run a liquor shop within the territory which falls within the municipal limits of Sheorinarayan.

2. On 17-02-06, a press-note was issued calling for applications for grant of FL and CL licences in Sheorinarayan group of shops for the period commencing from 01-04-06 to 31-03-07. In response to that press-note issued by the Collector (Excise), District Janjgir Champa, petitioner-Bhaiyalal Jaiswal applied for the licence. The Collector (Excise), District Janjgir Champa by his order dated on 30-03-06 granted the licence to Bhaiyalal Jaiswal. It appears that after the grant of licence in favour of Bhaiyalal Jaiswal, the local Member of Legislative Assembly took exception to the grant of licence on the ground that the licensee was permitted to establish the liquor shop within the municipal limits of Sheorinarayan Municipality. That led to the Collector (Excise), District

Janjgir Champa issuing a notice dated 07-04-06 followed by another notice dated 13-04-06 directing the licensee to shift the liquor shop outside the municipal limits of Sheorinarayan. Feeling aggrieved by the above notices, licensee-Bhaiyalal Jaiswal has preferred W.P. No. 2191/2006. A Single Judge Bench of this Court while entertaining the writ petition on 26-04-06 directed that *status quo* that obtained as on that day should be maintained till further orders.

3. On service of notice, respondents/ State Authorities have put in appearance through learned Addl. A.G. and they have filed the return opposing the writ petition. They have also filed M.W.P. No. 2087/2006 praying for vacation of the interim order granted by this Court on 26-04-06. When the matter stood thus, Visheshwer Narayan Dwivedi who is a Mahant of the temple Annpurna Mandir, situate in Sheorinarayan has filed W.P. No. 2584/2006 as Public Interest Litigation to espouse the cause of the public without seeking any personal relief. In the said PIL also licence granted in favour of Bhaiyalal Jaiswal has been assailed. Since the subject matter of both the writ petitions is the same, we clubbed both the writ petitions and with the consent of the learned counsel for the parties, we heard the writ petitions finally and they are being disposed of by this common order.

4. We heard Shri Manindra Shrivastava, learned Sr. counsel for the petitioner in W.P. No. 2191/2006 and Shri Prashant Jayaswal, learned Sr. counsel for the petitioner in W.P. No. 2584/2006 and Shri Prashant Mishra, learned Addl. A.G. for the respondents/State Authorities.

5. The basic facts are not disputed and if they are not in dispute, we are of the considered opinion that only on the ground of undisputed facts,

the licence granted in favour of Bhaiyalal Jaiswal, impugned in both the writ petitions, could not be sustained in law.

6. Undisputed facts are:-

Well before the Collector (Excise), District Janjgir Champa issued a press-note on 17-02-06 calling for applications for grant of licence, the Commissioner of Excise, State of Chhattisgarh on 13-02-06 had issued administrative instructions. Clause 4.2 of the said circular, in specific terms, directs that liquor licence shall not be granted in a location which falls within the territorial limits of seven specified Municipalities wherein holy places are situate. Sheorinarayan Municipality is one of the said Municipalities specified in the circular. The power of the Excise Commissioner to issue the circular is not contested before us by any of the petitioners and it could not be contested also. It is needless to state that the Collector (Excise), District Janjgir Champa is legally bound by the administrative instructions issued by the Excise Commissioner, State of Chhattisgarh. Admittedly, in pursuance of the licence issued by the Collector (Excise), District Janjgir Champa, the petitioner Bhaiyalal Jaiswal was allowed to establish the liquor shop within the limits of Sheorinarayan Municipality and in fact, he established the liquor shop very much within the limits. If the licence issued by the Collector (Excise), District Janjgir Champa is in utter violation of the mandatory conditions prescribed by the Excise Commissioner by virtue of the delegated power under the C.G. Excise Act, no exception could be taken by the petitioner to the impugned action of the Collector (Excise), to correct the wrong order passed by him. In that view of the matter, we do not find any merit in W.P. No. 2191/2006 and it is accordingly dismissed. For the same reasons stated by us *supra*, W.P. No. 2584/2006 filed by Visheshwer Narayan Dwivedi as PIL is

entitled to be allowed. It is accordingly allowed and the licence granted in favour of the 4th respondent-Shri Bhaiyalal Jaiswal is quashed. In both the writ petitions, the parties are directed to bear their respective costs.

Sd/-
Chief Justice

Sd-/
Dilip Raosaheb Deshmukh
Judge